APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
UNITED STATES OF AMERICA

v. 96-CR-115A (WDNY)
CR 96-631 (CDCA)

KIMBERLY GOODMAN,
Defendant.

PLEA AGREEMENT

United States v. Kimberly Goodman, CR 96-631 (Central District of California); 96-CR-115A (Western District of New York).

INTRODUCTORY PARAGRAPH

1. This constitutes the plea agreement pursuant to Rule 11 (e)(l)(B) of the Federal Rules of Criminal Procedure which has been offered to you by the United States Attorney's Office for the Central District of California ("this Office") in United States v. Kimberly Goodman. This agreement is limited to the United States Attorney's Office for the Central District of California and the United States Attorney's Office for the Western District of New York for the purposes of a Rule 20 (of the Federal Rules of Criminal Procedure) disposition, but does not bind any other federal, state or local prosecuting, administrative or regulatory authorities. This agreement applies only to criminal violations relating to you. This agreement does not apply to any forfeiture proceedings, judicial, administrative, or otherwise, and shall not preclude any past, present, or future forfeiture actions. This agreement is premised on defendant Goodman executing a "Consent to Transfer Case for Plea and Sentence" and "Waiver of Indictment". By signing this agreement defendant Goodman acknowledges the right, jurisdiction and authority of the District

Court and the United States Attorney for the Western District of New York to handle defendant's plea of guilty to the information and subsequent sentence as set out in this plea agreement. If, after discussing this offer with your attorney, you and your attorney decide to accept this offer, please sign in the spaces provided below. If you do not accept this offer by October 3, 1996, it is automatically withdrawn. In order to resolve this matter fairly and in a manner that accurately reflects your conduct, and the pursuit of justice, the terms of the agreement are as follows:

PLEA

2. You agree to plead guilty to a single count information in United States v. Kimberly Goodman in lieu of being charged in a multi-count conspiracy and mail fraud indictment. By signing this agreement, you waive indictment by a grand jury and agree to plead guilty to an information charging you with a substantive mail fraud count in violation of 18 U.S.C. § 1341, concerning the July 23, 1991 audit confirmation for the City of Loma Linda, California which you caused to be mailed via the United States mails and in which you intentionally represented to the City and its auditors that the City's cash account balance at Refco in New York (where you worked) was over two and a half million dollars when in fact the City's account at Refco had slightly less than $3,000. In order to be guilty of an offense under 18 U.S.C. § 1341 you agree that you committed and the government could prove all of the following elements of the offense:

(1) that you participated in and aided and abetted a scheme or plan for obtaining money or property by making false statements or omissions to the City of Loma Linda on the audit confirmation;

(2) that you knew that the statements or omissions on the audit confirmation were false;

(3) that the statements or omissions were material and were of a kind or type that would reasonably influence the City of Loma Linda to part with money or property; that is to leave their funds under the care of your co-schemer, Steven Wymer;

(4) that you acted with the intent to defraud, that is that you had the intent or knowingly aided and abetted your co-schemer Wymer's intent to obtain money from the City of Loma Linda by deceiving the City; and

(5) that you used or caused the U.S. mails to be used to carry out the scheme.

By signing this agreement, you admit that you are, in fact, guilty of this offense and will enter your guilty plea before the Court.

MAXIMUM SENTENCE AND RESTITUTION

3. (a).The maximum sentence that the Court can impose is 5 years incarceration, a 3 year period of supervised release, a fine of $250,000 and a special assessment of $50 pursuant to 18 U.S.C. § 3013. If you are placed on supervised release following imprisonment and you violate one or more of the conditions of supervised release, you may be returned to prison for all or part of the term of supervised release, which could result in your serving a total term of imprisonment greater than the statutory maximum stated above. The Court can also order you to pay the costs of your imprisonment, community confinement and supervised release or probation. You understand that the cost of imprisonment in the Western District of New York is approximately $1,779 per month; the cost of community confinement is approximately $1,183 per month and supervised release or probation is approximately $195 per month. You understand that, should any of your sentence be served in community confinement, such a facility may assess up to 25% of your gross earnings over and above that amount assessed by the Court and should any part of your sentence be home confinement it is understood that the cost in the Western District of New York is $153.45 per month. You further agree to pay your special assessment before or on the date you are sentenced.

(b) By signing this agreement, you also agree that the Court can order you to pay restitution for the full loss caused by your activities. You understand that the government and you have not come to an agreement as to a restitution amount that may be imposed upon you at the time of sentencing.

However, it is recommended by you and the government that the amount of restitution ordered should not be in excess of the loss amount attributable to you as determined by the probation department. However, you agree and understand that should the Court impose a restitution order, it is not restricted to the amount alleged in the information to which you are pleading guilty. You further agree that any restitution imposed by the Court may not be discharged, in whole or in part, in any present or future bankruptcy proceeding.

FACTUAL BASIS

4. You and this Office agree and stipulate to the following statement of facts which form the basis, for the entry of the plea of guilty to the information and which also constitute relevant conduct pursuant to U.S.S.G § 1B1.3:

(a) Defendant Kimberly Goodman worked at Refco Securities, a broker/dealer, from the mid 1980's through early 1992. Through her work at Refco she came to know Steven Wymer, an investment advisor in Irvine, California. Wymer would cause individuals and municipalities from around the country to deposit excess or surplus funds under his companies' (Denman and Company and Institutional Treasury Management) control. He promised his clients a high rate of return in government securities. When clients invested, he had them send their money to Refco. Almost immediately he would raid those accounts and use one client's money to pay the other clients to whom he'd also promised a high rate of return.

(c) Because the accounting firms that audited the clients' financial condition would periodically ask for verification of the clients' account balances at Refco, it also became necessary for Wymer to enlist an insider at Refco to "verify" client balances when in fact, the clients had no money at Refco or significantly less than what Wymer had told them. For this purpose he turned to defendant Kimberly Goodman. Wymer had the clients send their

audit confirmation queries to Goodman's attention at Refco. With these queries the client cities requested verification of their account balances, securities held and interest paid on the cities accounts at Refco. The Refco responses prepared by defendant Goodman in New York (after consulting with the Wymer employee, in California, who had prepared the fraudulent monthly activity reports) were relied on by the cities and their auditors for projecting municipal spending.

(d) When defendant Goodman, in New York, received the cities' audit confirmation inquiries, she would telephone Wymer's office to ascertain what information the client city had been told by Wymer. Defendant Goodman would then place the false information (such as information concerning the client cities account balance) on the confirmation and would often fax a copy to Wymer's office to ensure that she was reporting the "correct" falsified information. Thereafter, defendant Goodman would sign her name to the audit confirmation and cause it to be placed in the U.S. mails where it was subsequently received and relied on by the client cities and their auditors.

(e) In the count alleged in the information, defendant Goodman on or about July 23, 1991 sent an audit confirmation response to the City of Loma Linda in which she represented that the city's cash account balance at Refco was $2,699,250.56. She received that false information from another co-schemer at Wymer's office in Irvine, California who kept a notebook containing the false information that was to be reported to the clients. The figure contained in the Wymer notebook was identical to the one that defendant Goodman reported to the City of Loma Linda. The information was false because at the time that defendant Goodman represented that balance to the City, the City of Loma Linda actually had slightly less than $3,000 in its account at Refco.

(f) Wymer made defendant Goodman gifts of two luxury automobiles (specifically a new Jaguar XJS and a new

Mercedes 560 SEL) during the pendency of the scheme from late 1987 through December 1991 when Wymer (who was subsequently convicted for a complex series of fraud schemes) was arrested. During that time, Wymer also funded a trading account at Refco that was in defendant Goodman's exclusive control, in a total amount of $178,000.

(g) A forensic handwriting examiner identified defendant Goodman's handwriting on the following documents which included:

(1) a June 20, 1989 audit confirmation for the City of Loma Linda which confirmed an account at Refco at a time when the City had no account at Refco;

(2) a July 19, 1989 audit confirmation for the City of Loma Linda which appeared to "verify" an almost 3 million balance in the City of Loma Linda's name at Refco when in fact there was less than $9,000, and

(3) an October 25, 1990 audit confirmation for the City of Loma Linda wherein defendant Goodman represented that the City of Loma Linda's account balance at Refco was over $2.6 million when in fact it was $2.00.

Further, the handwriting examiner also identified defendant Goodman as the writer of the July 23, 1991 audit confirmation for the City of Loma Linda which constitutes the basis of the single count information against defendant Goodman.

(h) A finger print analyst identified defendant Goodman's fingerprint on the October 25, 1990 audit confirmation response.

(i) The City of Loma Linda and its auditors relied on the information contained in the audit confirmations prepared by and mailed to them by defendant Goodman. But for the City's reliance on defendant Goodman's representations and omissions, the City would not have kept its funds under the supervision of Steven Wymer and would not have suffered an after recovery loss of less than $800,000 but more then $500,000. See U.S.S.G. 2Fl.l(b)(l)(K) (loss amount less than $800,000 but greater than $500,000.)

(j) Refco compliance officers would have testified that defendant Goodman should not have had client cities direct their audit confirmations to her and that she was acting improperly and not in accordance with Refco procedures when she contacted Wymer's office to receive the false account balance information which she relayed to the client cities. Moreover, Refco officials would have testified that it is a violation of company policy to receive cash payments and automobiles from clients/investment advisors.

SENTENCING FACTORS

5. You and the government agree and stipulate that the 1995 edition of the United States Sentencing Guidelines apply and do further stipulate to the following applicable sentencing guideline factors :

Base Offense Level	:	+ 6	[U.S.S.G. § 2Fl.l(a)]
Specific Offense Characteristics loss in excess of $500,000 but less than $800,0000	:	+10	[U.S.S.G § 2Fl.l(b)(1)(K)]
Adjustment for more than minimal planning	:	+ 2	[U.S.S.G. § 2Fl.l]
Minimal Participant Adjustment	:	(minus 4)	[U.S.S.G. 3Bl.2]

Acceptance of Responsibility: (minus 2) [U.S.S.G. 3El.1]

TOTAL OFFENSE LEVEL 12

Sentencing Table: 10 to 16 months (Zone C) if the court finds criminal history category one. (See paragraph 6 below.)

Both parties waive the right to argue that other specific offense characteristics, adjustments and departures may be appropriate except that the defense is not precluded from making and substantiating a departure request based on "extraordinary family circumstances" pursuant to the policy statement contained in U.S.S.G § 5Hl.6. The government reserves the right to argue against that request.

6. You understand that there is no agreement as to your criminal history or criminal history category, and that your criminal history could alter your offense level if you are a career offender or if the instant offense was a part of a pattern of criminal conduct from which you derived a substantial portion of your income. In the event your offense level is so altered, the parties are not bound by the sentencing factors stipulation set forth in paragraph 5 above.

7. You understand and agree that neither the United States Probation Office nor the Court is bound by the stipulations referenced in this agreement and that the Court will, with the aid of the presentence report, determine the facts and calculations relevant to sentencing. You further understand that both you and this Office are free to supplement these stipulated facts by supplying relevant information to the United States Probation Office, and this Office specifically reserves its right to correct any and all factual misstatements relating to the calculation of your sentence. You understand that the Court cannot rely exclusively upon the parties' stipulation in ascertaining the factors relevant to the determination of your sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the

presentence investigation, and any other relevant information. You understand that if the Court ascertains factors different from those contained in the stipulation, you cannot, for that reason alone, withdraw your guilty plea. You further agree that in the event the Court's sentencing calculations are different than those set forth in paragraph 6 above, the neither party will appeal the Court's decision.

CONSIDERATION BY OFFICE

8. In exchange for your guilty plea and your complete fulfillment of all of your obligations under this agreement, this Office agrees:

a) To recommend a two-level reduction in the applicable sentencing guideline offense level, pursuant to sentencing guideline 3El.1, if you demonstrate an acceptance of responsibility for this offense by virtue of your conduct up to and including the time of sentencing; and b) To not prosecute you for any other fraudulent conduct stemming from your interaction with defendant Steve Wymer from 1987 through 1992.

AT SENTENCING

9. When you appear before the Court for sentencing, the Government will bring to the Court's attention all other relevant information with respect to your background, character and conduct, including the conduct for which you have not been charged involving your actions with coconspirator Steven Wymer. Further, the Government will be entitled to bring to the Court's attention and the Court will be entitled to consider your failure to fulfill any of your obligations under this agreement.

WAIVER OF CONSTITUTIONAL RIGHTS

10. You understand that by pleading guilty, you will be giving up the following Constitutional rights: You have the right to plead not guilty and the right to be tried by a jury or a court if you waive your right to a jury trial. At a trial, you would have the

right to the assistance of counsel and if you could not afford an attorney, the Court would appoint one to represent you. During the trial, you would be presumed innocent and a jury would be instructed that the burden of proof is on the government to prove you guilty beyond a reasonable doubt. You would have the right to confront and cross-examine witnesses against you. If you wish, you could testify on your own behalf and present evidence in your defense. On the other hand, if you did not wish to testify or present evidence, that fact could not be used against you and a jury would be so instructed. You would also have the right to call witnesses on your behalf. By pleading guilty, you will be giving up all of these rights. By pleading guilty, you further understand that you will be waiving any and all rights to pursue any applicable affirmative defenses, any Fourth Amendment or Fifth Amendment claims, and any other actual or potential pretrial motions previously filed or to be filed. Finally, by pleading guilty, you understand that you may have to answer questions posed to you by the Court both about the rights that you will be giving up and about the facts of this case. Any statements made by you during such a hearing could be used against you in a criminal prosecution for perjury or false statements.

WAIVER OF APPEAL

10. You understand that Title 18, United States Code, Section 3742 gives you the right to appeal the sentence imposed by the Court. Acknowledging this, you knowingly and voluntarily waive your right to appeal any sentence (including any aspect of the sentence ordering you to make restitution) imposed by the Court and the manner in which the sentence is determined so long as your sentence is within the statutory maximum specified above.

11. This agreement does preclude the Government from appealing the sentence imposed by the Court.

PARTIES TO AGREEMENT

12. You understand that pursuant to Rule 11 (e)(l)(B), the

Court is not a party to this agreement and the Court is under no obligation to accept the Government's recommendation regarding the sentence to be imposed. Further, even if the Court disregards this Office's recommendation and/or imposes any sentence up to the maximum established by statute, you cannot, for that reason, withdraw your guilty plea, and will remain bound to fulfill all of your obligations under this agreement. You understand that neither the prosecutor, your attorney, nor the Court can make a binding prediction or promise regarding the sentence you will receive.

BREACH OF AGREEMENT

13. If you commit any crimes or if any of your statements to the court or testimony prove to be false, misleading or materially incomplete, or if you otherwise violate this Agreement in any way, the Government will no longer be bound by its representations to you concerning the limits on criminal prosecution or sentencing recommendation, as set forth above. Further, you shall assert no claim under the United States Constitution, any statute, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by you before or after this Agreement, or any leads derived therefrom, should be suppressed. By signing this Agreement, you waive any and all rights in the foregoing respects. Finally, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against you in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of any such prosecutions. You agree to waive any and all defenses based on the statute of limitations with respect to any prosecutions that are not time-barred on the date you sign this Agreement.

NO ADDITIONAL AGREEMENTS

14. Except as expressly set forth herein, there are no additional promises, understandings or agreements between the government and you or your counsel concerning any other criminal prosecution, civil litigation or administrative proceeding relating to any other federal, state or local charges that may now be pending or hereafter be brought against you, or the sentence that might be imposed as a result of your guilty plea pursuant to this Agreement. Nor may any additional agreement, understanding or condition be entered into unless in writing and signed by all parties.

15. This agreement is not contingent in any way upon the outcome of any investigation, proceeding, motions hearing or subsequent trial.

If a fully executed copy of this agreement is not agreed to and adopted by October 3, 1996, it will be automatically withdrawn and thereafter of no legal effect or force.

This agreement shall be effective upon execution by you and this Office.

AGREED AND ACCEPTED

UNITED STATES
ATTORNEY'S OFFICE

CENTRAL DISTRICT
OF CALIFORNIA

NORA M. MANELLA
United States Attorney

JULIE WERNER-SIMON
Assistant United
States Attorney
Central District of California

UNITED STATES
ATTORNEY'S OFFICE

WESTERN DISTRICT
OF NEW YORK

PATRICK H. NEMOYER
United States Attorney

ANTHONY BRUCE
Assistant United
States Attorney
Western District of New York

I, Kimberly Goodman, have read this agreement and have

carefully reviewed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to each of the terms. Before signing this agreement, I consulted extensively with my first attorney, James Moss and with my current attorney, Joseph Mistrett. Both of my attorneys have fully advised me of my rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this agreement. No other promises or inducements have been made to me, other than those contained in this agreement. Furthermore, no one has threatened or forced me in any way to enter into this agreement. Finally, I am very satisfied with the legal representation of Mr. Moss, my first attorney who initially negotiated this plea agreement and I am also very satisfied with Mr. Mistrett, who is now representing me and who will be handling my plea of guilty and my sentencing in this case.

Date

KIMBERLY GOODMAN
Defendant

I am Kimberly Goodman's attorney. I have carefully reviewed every part of this agreement with my client. I have also discussed this case with her former attorney, Mr. James Moss. In addition, I have fully advised my client of her rights, of possible defenses, of the Sentencing Guideline provisions, and the consequences of entering into this agreement. My client's decision to enter into this agreement is an informed and voluntary one. I believe it is in her best interest.

Date

JOSEPH MISTRETT
Counsel for Defendant
Kimberly Goodman